IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14789 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VM MEHTA - Petitioner(s)

Versus

GUJARAT STATE FINANCIAL CORPORATION - Respondent(s)

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Appearance :

MR.VARUN K.PATEL for Petitioner(s) : 1,
MR PARESH UPADHYAY for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 14/02/2006

ORAL JUDGMENT

Rule. Mr. Upadhyay, learned counsel for the respondent waives notice of Rule. With the consent of the parties, the matter is taken up for final hearing today.

2. The only question which arise for consideration of this Court is whether the decision of the appellate authority can be maintained in the eye of law, if the same is without giving the opportunity of hearing to the petitioner, who was appellant before the appellate authority.

3. As on factual aspects, for initiation of the departmental inquiry, the holding of the inquiry, imposition of punishment by the disciplinary authority who was Managing Director in the present case, these facts are not in disputes. It is also not in dispute that the petitioner was aggrieved by the decision of the disciplinary authority, i.e. the Managing Director and he preferred the appeal as per Section 41 of the Staff Regulations, 1961, framed under the Gujarat State Financial Corporation. It is also not in dispute that the appellate authority has dismissed the appeal.

4. The perusal of the order of the appellate authority dated October 30, 2001, shows that the Board of Director who is the appellate authority in the present case has decided that it would not be feasible nor necessary to grant personal hearing in such cases and therefore, it is an admitted position that the personal hearing has not been granted to the petitioner.

5. The power of the disciplinary authority for imposition of the punishment are as that of a quasi judicial authority, though the appellate authority may not be a judicial authority, but as one additional forum is provided for intradepartmental appeal, it would be expected for the appellate authority to exercise the

power as quasi judicial and the minimum requirement in my view would be to give an opportunity of hearing to the affected person and then to decide the matter. The principles of natural justice are required to be observed atleast to the extent of giving an opportunity of hearing to the person who has preferred an appeal before the appellate authority. The regulations provide for the right of appeal and of the appellate authority and the conditions which an appeal should satisfy, there is no express provision under the regulations prohibiting the opportunity of hearing to the appellant. It is well settled that even if the statute provides for exercise of power and if such power is exercised, which may adversely affect the person concerned, the principles of natural justice are to be impliedly read unless it is expressly barred by statutory provisions. In the present case, the regulations are in the nature of subordinate legislations and therefore, there is no reason why such principles of natural justice should not be made applicable when power is to be exercised by the appellate authority as per the regulations for deciding the appeal. It is an admitted position that no hearing is given to the petitioner. Therefore, the order of the appellate authority can be said as in breach of the principles of natural justice.

6. The additional aspect, which is mentioned by the appellate authority in the impugned order is that it would not be feasible to grant personal hearing. It is true that there cannot be any State Jacket formula for applicability of principles of natural justice and if the circumstances so demand immediate action, the

hearing may be given after passing the order, but in a case where the punishment is already imposed and is already given effect to and the appeal is to be heard considering the facts and circumstances that the penalty imposed is of withholding of two increments, it was not a case where the conclusion can be validly arrived at by the appellate authority that it was not feasible to grant personal hearing, since it was not falling in the category of exceptional cases, where the post-decisional hearing may be granted.

7. In view of the above, the order dated October 30th, 2001 passed by the appellate authority of the Corporation is quashed and set aside on the ground of breach of principles of natural justice and it is further directed that the appeal shall stand restored and the Board of Director of the respondent Corporation shall decide the appeal afresh after giving opportunity of hearing to the petitioner and shall pass the appropriate order preferably within a period of six months from the receipt of the order of this Court.

8. As such, in view of the aforesaid directions, the order in review would not survive.

9. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no orders as to cost.

(JAYANT PATEL, J.)

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